

PAUL S. COUPEY

IBLA 78-280

Decided May 15, 1978

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Appeals from decisions of the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned. NM-MC 2483-2595, NM-MC 3141-3156, NM-MC 2313-2358.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment
Work--Mining Claims: Abandonment--Mining Claims: Assessment

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

2. Federal Land Policy and Management Act of 1976: Assessment
Work--Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment--Mining Claims:
Assessment Work--Mining Claims: Location--Mining Claims:
Recordation

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h), not the date on which the owner completes the last step in locating and recording a mining claim as required by state law.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Federal Land Policy and Management Act of 1976: Recordation of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work--Mining Claims: Recordation

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

4. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work--Mining Claims: Possessory Rights--Mining Claims: Recordation

The holding of a mining claim and the diligent pursuance of mining activities on it does not relieve its owner of the obligation imposed by statute to file an affidavit of assessment work or a notice of intention to hold a mining claim.

5. Administrative Authority: Estoppel--Estoppel--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice to Hold Mining Claims

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

APPEARANCES: Richard D. Addis, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Paul S. Coupey has appealed from several decisions dated January 24 and January 26, 1978, respectively, of the New Mexico

State Office, Bureau of Land Management (BLM), holding each of the mining claims listed therein to have been abandoned for failure to file an affidavit of assessment work or notice of intention to hold each such claim, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (1977 Supp.), and the pertinent regulation 43 CFR 3833.2-1(b) and 3833.4(a).

The mining claims were located at various dates in November 1977. 1/

Copies of the location notices were filed with the State Office on February 14, 22, and 28, 1977. Sec. 314(a)(1) and (2), supra, and the pertinent regulation, 43 CFR 3833.2-1(b)(7), 42 FR 5301-5302, require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with the State Office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim. Sec. 314(1)(c), supra; 43 CFR 3833.4(a), 42 FR 5302. Since these claims were located in calendar year 1976, and after October 21, one or the other of the documents had to be filed prior to December 31, 1977.

[1] The mining claimant having failed to file either an affidavit or notice of intention, the State Office held the claims to have been abandoned and declared them void. This decision was proper. 2/

[2] Appellant disputes the decision for several reasons. First, he contends that under New Mexico law, a lode claim is not legally located until a copy has been filed in the office of the proper county clerk. Since that filing occurred in 1977, he says, the location was not perfected until that year and, consequently, no filing was due until calendar year 1978.

Assuming that the New Mexico law is as appellant states, it does not help him. The regulation defines "date of location" as the "date indicated on the notice of location or discovery posted on an unpatented mining claim." 43 CFR 3830.5(h). Appellant's Notice of Lode Mining Location state that each claim had been located on or before November 30, 1976, and a copy of notice of location posted on it.

1/ The State Office numbers and location dates of the several groups of claims are:

NM-MC 2483-2595 November 26-30, 1976

NM-MC 3141-3156 November 30, 1976

NM-MC 2313-2358 November 16, 1976

2/ BLM Organic Act Directive No. 78-17 (March 28, 1978) is in accord.

Therefore, for the purposes of section 314, supra, each of the claims was located in 1976 and the required notice or affidavit had to be filed in 1977, the following calendar year.

As was recently held:

The argument that the 90-day period began to run on July 22, 1977, when Appellant's notices of location were filed in the County Recorder's Office is also without merit. Location of a claim is a district event whose date is required to be entered on the location certificate under the Nevada Statutes, NRS 517.050 1(c). The statute itself utilizes the date of location as the onset of a 90-day period within which recordation must occur. Recordation is an event wholly distinct from location, and the Nevada Statutes offer no support for Appellant's argument.

Southwestern Exploration Associates, 33 IBLA 240, 242 (1977).

[3] Next, appellant urges that the Notice of Location which he filed on February 22, 1977, is the legal equivalent of "a notice of intention to hold a mining claim" and satisfies the requirements of the statute. The notice of location and the notice of intent to hold are separate documents. The regulation 43 CFR 3823.2-3, 42 FR 5302, sets out in detail the information that must be set out in a notice of intention to hold a mining claim, which is different from that stated in a notice of location. Thus, the one form cannot serve both purposes.

[4] The appellant then states that he has been in possession of and has been diligently pursuing mining activities upon the claims to the exclusion of all others. This assertion may be true, but it does not relieve him of the obligation to file the required notices.

[5] Finally, Coupey adverts to instructions issued by the BLM in January 1977 entitled "Questions and Answers--Recording of Mining Claims." From it he quotes the following:

Q. How often do mining claim owners file this assessment work or notice of intent?

A. All claimants must file either evidence of assessment work or notice of intent by December 31 of the calendar year following date of recordation with BLM. All claims or sites located on or before October 21, 1976, have three years from October 21, 1976, to be recorded with BLM. For claims located after October 21, 1976, you have 90 days from the date of location to record with BLM.

This exchange is accurate only in part. It faithfully summarizes the statute and regulation, 43 CFR 3833.2-1(a), 42 CFR 5301, as to claims located on or prior to October 21, 1976. For such claims the affidavit of assessment or notice of intention to hold a claim need be filed in the calendar year following the year of recording. If, however, the notice of location is recorded in 1979, a notice of intention to hold must also be filed on or before October 21 of that year.

For claims located after October 21, 1976, the statute and regulation are specific and different. The statute provides that the owner of such a claim must file a notice of intention to hold the mining claim prior to December 31 of each year following the calendar year in which said claim was located. Sec. 314(a) and (a)(1), supra. The regulation repeats the statute. 43 CFR 3833.2-1(b)(1). Since Coupey's claims were located in 1976, the notices of location had to be filed prior to December 31, 1977.

The brief and summary explanation set out in the question and answer release cannot replace the exact requirements of the statute and regulation. As has been held many times, and indeed, as the pertinent regulation provides, reliance on erroneous advice by the BLM employees cannot estop the United States or confer on an applicant any right not authorized by law. Charles M. Brady, 33 IBLA 375 (1978); Belton E. Hall, 33 IBLA 349 (1978); Northwest Citizens For Wilderness Mining Co., Inc., 33 IBLA 317 (1978); Charles House et al., 33 IBLA 308 (1978), and cases cited; 43 CFR 1810.3(b) and (c). Thus, the question and answer release cannot relieve the appellant of his obligation to comply with the filing requirements of the statute or suffer the consequences.

Appellant has requested a hearing to present evidence. Since the issues are legal ones, fully discussed by appellant in his brief, a hearing would serve no purpose, and the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

